UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,766	12/18/2001	Adrian Crisan	1662-55100 JMH (P01-3806)	4713

22879 7590 06/15/2007		
HEWLETT PACKARD COMPANY	EXAMINER	
P O BOX 272400, 3404 E. HARMONY ROAD	ROMANO, JOHN J	
INTELLECTUAL PROPERTY ADMINISTRATION		
FORT COLLINS, CO 80527-2400	ART UNIT	PAPER NUMBER
	2192	

MAIL DATE	DELIVERY MODE
06/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/029,766	CRISAN ET AL.
	Examiner	**Art Unit**	
	John J. Romano	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>4/03/2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,4-9,11-16,18-20,27 and 28</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1, 4-9, 11-16, 18-20 and 27-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a)☐ All   b)☐ Some * c)☐ None of:

         1.☐ Certified copies of the priority documents have been received.

         2.☐ Certified copies of the priority documents have been received in Application No. _____.

         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Applicant's amendment and response received April 3rd, 2007, responding to the

January 3rd, 2007, Office action provided in the rejections of claims 1, 4-9, 11-16, 18-20

and 27-28, wherein claims 1, 4-9, 11-16, 18-20 and 27-28 remain pending in the

application and which have been fully considered by the examiner.

Applicant arguing for the claims being patentable over *the prior art* (see pages 6-

12 of the response) are not persuasive, as will be addressed under Prior Art's

Arguments – Rejections section at item 2 and the claim rejections below. Accordingly,

Applicants' arguments necessitated additional clarifications. Thus, the rejection of the

claims over prior art in the previous Office action is maintained in light of the

necessitated additional clarifications provided hereon and **THIS ACTION IS MADE**

FINAL. Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Prior Art's Arguments – Rejections

2.   Applicant's arguments filed April 3rd, 2007, in particular on pages 10-12, have been fully considered but they are not persuasive. For example,

(A) In response to applicant's argument that *Marsh* does not show or suggest the concept of flashing the ROM with an upgraded image before the loading of any portion of the operating system in RAM (See response page 10, first paragraph) the examiner respectfully disagrees. Applicant's argument appears to be based on the premise that *Marsh* teaches downloading the installed upgrade with the operating system. It is pointed out that *Marsh* is not cited for teaching the download of the upgrade. However, the fact that *Marsh* downloads the upgraded software with the operating system does not mean that *Marsh* cannot initialize the system again. Accordingly, the plain language of the claim does *not* require or equate to *having never loaded an operating system*. The fact that the computer previously was turned on and loaded an operating does not mean that the computer cannot initialize again. Accordingly, Marsh does indeed teach flashing the ROM with an upgraded system during system initialization.

(B) In response to applicant's argument that *Marsh* teaches away from the concept of flashing the ROM before an operating system is executed (See response page 10, second paragraph) the examiner respectfully disagrees. Again, Applicant's argument appears to be based on the premise that because an operating system was once loaded, *Marsh* cannot teach "before the operating system". Applicant argues that a user would have to reboot in order to have firmware upgraded (page 10, second paragraph). Again, examiner refers applicant to the rational used in section (A) above. The fact that the computer once loaded an operating system

does not mean it cannot be re-initialized. Furthermore, in regard to Applicant's arguments relating to re-booting it is noted that the plain language of the claim does not preclude *re-booting*. Accordingly, the rejection is maintained with regard to the instant argument.

(C) In response to applicant's argument that *Doherty* teaches away from upgrading the BIOS system or firmware on the ROM without loading a portion of the operating system (See response page 10, third - fourth paragraphs) the examiner respectfully disagrees. It is noted that *Doherty* teaches a Preboot Execution Environment (PXE), wherein software may be downloaded from a remote location over the network before loading an operating system (See *Doherty*, Column 1, lines 22-35) to obtain management services from a management server including application distribution and problem diagnostic tools (See Doherty, column 1, lines 50-53). *Doherty* also teaches that a BIOS (See Figure 2, 220 & Column 4, lines 1-11), which is distinct from the operating system may be implemented in software, hardware, or a combination of both. Accordingly, the fact that *Doherty* does not expressly teach downloading a BIOS upgrade does not teach away from downloading a BIOS upgrade as argued. Thus, the rejection is maintained in light of the instant argument.

(D) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (See response page 11, second paragraph), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, it would have been

obvious to one of ordinary skill in the art, at the time the invention was made, to combine

Doherty's teaching of downloading software applications from a remote managing location in a

pre-boot environment with a BIOS application. *Doherty's* express disclosure of BIOS software

would have motivated the combination. *Marshes* teaching of subsequently, rebooting after

downloading the software and installing the software during initializing, thereby reads on the

plain language of the claim. Again, it is noted that "without rebooting" is not read into the claim

language.

(E) In response to applicant's argument that there is no suggestion to combine the

references (See response page 11, third paragraph), the examiner recognizes that obviousness can

only be established by combining or modifying the teachings of the prior art to produce the

claimed invention where there is some teaching, suggestion, or motivation to do so found either

in the references themselves or in the knowledge generally available to one of ordinary skill in

the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958

F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner refers the Applicant to

section (C) above. Furthermore, one of ordinary skill in the art, would have been motivated to

combine *Doherty*'s pre-boot environment software application download (See section (B)with a

BIOS application download, particularly in light of *Doherty's* teaching of BIOS software (See

section (B) and *Marsh's* disclosure of downloading BIOS software (See section (A) above).

(F) Accordingly, independent claims 9, 16 and 27 are rejected and the dependent claims

to independent claims 1, 9, 16 and 27 are rejected at least for the reasons disclosed hereinabove.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or

described as set forth in section 102 of this title, if the differences between the subject matter

sought to be patented and the prior art are such that the subject matter as a whole would have

been obvious at the time the invention was made to a person having ordinary skill in the art to

which said subject matter pertains. Patentability shall not be negatived by the manner in which

the invention was made.

3.   Claims **1, 4, 6, 7, 9, 11, 13, 15, 16, 18, 20, 27** and **28** are rejected under 35

U.S.C. 103(a) as being unpatentable over Marsh et al., US 2002/0073304 A1

(hereinafter **Marsh**) and further in view of **Asco** et al., US 6,516,346, (hereinafter **Asco**)

and Jennery et al., US 6,742,025 (hereinafter **Jennery**) and further in view of Doherty et

al., US 7,080,134 (art being made of record and hereinafter **Doherty**).

In regard to claim **1, Marsh** discloses:

- *"A computer system, comprising:*

a central processing unit (CPU);..." (E.g., see Fig. 1 & Page 3, [0027]),

wherein, the microprocessor is the CPU.

- *"...and a programmable read only memory (ROM) coupled to said*

CPU..." (E.g., see Fig. 1 & Page 1, [0007]), wherein, the non-volatile

memory may be a EEPROM as disclosed in paragraph [0007] which is

both erasable and programmable. Also, it is shown in Figure 1 that the ROM or non-volatile memory is coupled to the microprocessor.

- *"... said ROM containing a digital image; ..."* (E.g., see Fig. 1 & Page 2, [0013]), wherein, instructions from the programmable non-volatile memory or ROM are inherently a digital image; therefore the ROM contains a digital image.

- *"...wherein said CPU programs its ROM during a system initialization ... wherein the system initialization further comprises a booting of said system..."* (E.g., see Fig. 4 & Page 5, [0048]), wherein, the flash application designated in the modified boot image, selected upon the next boot of the computer (system initialization), is erasing and then programming the non-volatile memory or ROM.

- *"...a connection to a network..."* (E.g., see Fig. 5 & Page 4, [0042]), wherein, the system is presented within a network configuration.

- *"...flashes the system ROM with the upgraded image if the upgraded image is available for said ROM."* (E.g., see Fig. 6 and Page 5, Paragraph [0047] and [0048]), wherein, the delivered firmware is the received upgraded image and the flash application flashes the ROM and installs the upgraded image.

But **Marsh** does not expressly disclose *"...during the system initialization, said system sends a message to a server coupled to the network to determine whether an*

upgraded image is available for said ROM" or *"...during the system initialization, said*

system receives an upgraded...". However, **Asco** discloses:

-   *"...said system sends a message to a server coupled to the network to*

    determine whether an upgraded image is available for said ROM..."

    (E.g., see Fig. 3 and Column 4, lines 26-56), wherein, the microcode is

    the upgraded BIOS image for a programmable ROM.

Marsh and **Asco** are analogous art because they are both concerned with the

same field of endeavor, namely, a firmware upgrade via the Internet. Therefore, at the

time the invention was made, it would have been obvious to a person of ordinary skill in

the art to modify **Marsh's** method for updating firmware with **Asco's** invention. The

motivation to do so would have been to further achieve **Asco's** objective of *"...making*

the upgrade process more user friendly..." (Page 1, lines 43-44). Each individual user

would not have to find and remember details of Internet addresses for the microcode

supplier. This would save time and increase productivity by letting the individual user

focus on other tasks.

Marsh and **Asco** disclose the system as described above. But **Marsh** and **Asco**

do not expressly disclose *"..."...during the system initialization, said system sends a*

message to a server coupled to the network ...". However **Jennery** discloses:

-   *"...during the system initialization, said system sends a message to a*

    server coupled to the network_..." (E.g., see Figure 8A (72) & Column

    13, lines 36-39), wherein the system (network device), during system

> initialization, sends or forwards a message (trigger data) to a server
>
> coupled to a network.
>
> - "...*during the system initialization, said system receives an*
>
>   *upgraded...*" (E.g., see Figure 8A (76) & Column 3, lines 39-44),
>
>   wherein the system (network device), during system initialization or
>
>   boot sequence, receives (trigger data) from a server coupled to a
>
>   network.

Jennery, and the combined teaching of **Marsh** and **Asco,** are analogous art

because they are both concerned with the same field of endeavor, namely, an

automated method to update software. Therefore, at the time the invention was made, it

would have been obvious to a person of ordinary skill in the art to modify the combined

teaching method for updating software with **Jennery's** invention. The motivation to do

so would have been to further achieve **Marsh's** objective of "...avoiding manual

intervention..." (Page 2, Paragraph [0013]), and **Asco's** objective as disclosed above.

Marsh, Asco and **Jennery** disclose the system as described above. But they do

not expressly disclose "...*before loading any portion of the operating system in a*

random access memory associated with the CPU..." However **Doherty** discloses:

> - "...*before loading any portion of the operating system in a random*
>
>   *access memory associated with the CPU...*" (E.g., see Fig. 2 &
>
>   Column 1, lines 23-36), wherein at boot up before loading an operating
>
>   system into main memory, a client may request instructions which
>
>   install an operating system. Additionally, it should be noted that

Doherty also discloses that the BIOS 220 is distinct from an operating

system that client may boot to during boot-up (see Column 4, lines 4-7)

Doherty, and the combined teaching of **Marsh, Asco** and **Jennery,** are

analogous art because they are both concerned with the same field of endeavor,

namely, an automated method to update software. Therefore, at the time the invention

was made, it would have been obvious to a person of ordinary skill in the art to use

Marsh's teaching of updating software by flashing the ROM upon startup (see **Marsh**

above), with **Doherty's** teaching of receiving the instructions to do so during start up as

well. The motivation to do so would have been to further achieve **Marsh's** objective of

"...avoiding manual intervention..." (Page 2, Paragraph [0013]), and **Asco's** objective

as disclosed above.

In regard to claim **4**, claim **4** is rejected as a system of previously disclosed claim

1, wherein the corresponding limitations of claim **4** are addressed in claim **1**.

In regard to claim **6**, **Marsh, Asco, Jennery** and **Doherty** disclose the system of

claim **1** above. But in claim **1**, they did not disclose expressly "...*wherein the message

includes an indication of the version of the ROM's current image."* However, **Asco**

discloses:

- "...*wherein the message includes an indication of the version of the

    ROM's current image."* (E.g., see Fig. 3 & Column 1, lines 48-63),

    wherein, the microcode level is the version of the ROM's current

    image.

In regard to claim **7**, **Marsh, Asco, Jennery** and **Doherty** disclose the system of

claim **1** above. But in claim **1**, they did not disclose expressly *"...wherein the message*

includes an indication of the class of the ROM." However, **Asco** discloses:

- *"...wherein the message includes an indication of the an indication of*

    the class of the ROM." (E.g., see Fig. 3 & Column 1, lines 48-63),

    wherein, the relevant hardware configuration is an indication of the

    class of the ROM.

In regard to claim **9**, claim **9** is rejected as a method version of claim **1**.

Correspondingly, **Marsh, Asco, Jennery** and **Doherty** disclose the limitations of claim

9 as described above in claim **1**. Thus the limitations are met for claim **9** as disclosed in

the respective above claims.

Respectively, claims **11, 13 and 15** are rejected as method versions of claims **4,**

6 and 7. Likewise, the limitations of the aforementioned claims are disclosed as

described in their corresponding claims. Thus, the limitations are met for claims **11, 13**

and 15.

In regard to claim **16**, **Marsh** discloses *"A ROM image system..."* as disclosed in

claim **1**, wherein the system of claim **1** is presented within a network configuration. But

Marsh does not disclose expressly *"...a server; and a database accessible by said*

server, said database storing information regarding ROM images; wherein said server

receives a message from computer to determine if an upgrade exists for the computer's

ROM image, uses said information to determine if an upgrade is available for the

computer's ROM image and transmits a message to the computer indicating whether an

upgrade is available" or a *"...message from a computer that is currently undergoing a*

system initialization..." and *"...transmits a message to the computer indicating whether*

an upgrade is available during the system initialization of the computer." However, **Asco**

discloses:

> - *"...comprising: a server; and a database accessible by said server,*
>
>   *said database storing information regarding ROM images; wherein*
>
>   *said server receives a message from computer to determine if an*
>
>   *upgrade exists for the computer's ROM image, uses said information*
>
>   *to determine if an upgrade is available for the computer's ROM image*
>
>   *and transmits a message to the computer indicating whether an*
>
>   *upgrade is available."* (E.g., see Figure 2 & Column 1 lines 45 - 63),
>
>   wherein the remote system is the server and the database associated
>
>   with the remote system contains current microcode level and
>
>   configuration information regarding the computer's ROM image. The
>
>   notification to the computer system is the message indicating that an
>
>   updated image is available.

But, **Asco** does not expressly disclose a *"...message from a computer that is*

currently undergoing a system initialization..." and *"...transmits a message to the*

computer indicating whether an upgrade is available during the system initialization of

the computer." However, **Jennery** discloses:

> - *"...message from a computer that is currently undergoing a system*
>
>   *initialization..."* (E.g., see Figure 8A (72) & Column 13, lines 36-39),

wherein the system (network device), during system initialization,

sends or forwards a message (trigger data) to a server coupled to a

network..

- "...*transmits a message to the computer indicating whether an upgrade*

is available during the system initialization of the computer." E.g., see

Figure 8A (76) & Column 3, lines 39-44), wherein the system (network

device), during system initialization or boot sequence, receives (trigger

data) from a server coupled to a network.

The remaining limitations are met as disclosed in claim **1**.

In regard to claim **18**, the rejections of base claim **16** are incorporated as

explained above. Furthermore, **Asco** discloses:

- "...*said response includes a pointer to where an upgraded image is*

located." (E.g., see Figure 1 & Column 2, lines 23-27), wherein, the

Internet address is a pointer to where an upgraded image is located.

In regard to claim **20**, **Marsh, Asco, Jennery** and **Doherty** disclose the method

of claim **18** as explained above. Furthermore, **Asco** discloses:

- "...*said pointer includes an IP address.*" (E.g., see Column 2, lines 23 -

27), wherein, the Internet Address is a pointer, which includes an IP

address.

In regard to claim **27**, claim **27** encompasses some limitations from claim **16** and

claim **1**, and also includes further limitations disclosed by **Asco**. Claim **1** discloses a

computer having a programmable ROM coupled to a server communicating with a

network, during initialization, without execution of an operating system associated with

the CPU. Claim **16** discloses a request to a server, including storage for a ROM image,

and a computer requesting a ROM image update from the said server. But the

aforementioned claims do not expressly disclose: "...*proxy enterprise ROM server to*

which the computers couple, said proxy enterprise ROM server communicating with a

network external to the enterprise..." or "...*a plurality of computers...*" or "...*includes a*

first storage area for an untested ROM image update, and a second storage area for an

approved ROM image update..." or "...*checks the second storage area for the*

approved ROM image update to be installed in the at least one of said computers,

wherein the approved ROM image update comprises the untested ROM image update

that has undergone at least one suitable approval test...". However, **Asco** discloses:

- "... *a proxy enterprise ROM server to which the computers couple, said*

     proxy enterprise ROM server communicating with a network external to

     the enterprise..." and "...*a plurality of computers...*". (E.g., see Figure 2

     & Column 2, line 64 – Column 3, line 10), wherein, a proxy server to

     which computers are coupled is the enterprise ROM server. A wide

     are data processing network comprising a local network connected via

     the Internet is interpreted as an enterprise computing system

     comprising a plurality of computers

But, **Marsh, Asco, Jennery** and **Doherty** do not expressly disclose "...*includes a*

first storage area for an untested ROM image update, and a second storage area for an

approved ROM image update..." or "...*checks the second storage area for the*

approved ROM image update to be installed in the at least one of said computers,

wherein the approved ROM image update comprises the untested ROM image update

that has undergone at least one suitable approval test...". However, it would have

been obvious to one of ordinary skill in the art, to test the upgrade before deploying it. It

would have been obvious because it is old and well known in the art that before an

upgrade or revision is issued for deploying it should be tested. Therefore it would have

been obvious to include a first storage area for an untested ROM image update and to

install the tested upgrade image as is well known in the art.

In regard to claim **28**, the rejections of base claim **1** are incorporated.

Furthermore, **Jennery** discloses:

- *"...upon each occurrence of the system initialization"*. (E.g., see Figure
  8A (72) & Column 13, lines 36-39), wherein the system (network
  device), during system boot sequence, which happens on each
  occurrence of the system initialization, sends or forwards a message
  (trigger data) to a server coupled to a network.

4.   Claims **5, 12** and **19** are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Marsh, Asco, Jennery** and **Doherty** as applied to claim **1** above, and further in

view of Martinez, US ,594,757 (hereinafter **Martinez**).

In regard to claim **5, Marsh, Asco, Jennery** and **Doherty** disclose the system of

claim **1** above. But in claim **1**, they did not disclose expressly "...*wherein said system*

receives a link to another server which provides the upgraded image." However,

Martinez, discloses:

- "...*wherein said system receives a link to another server which provides the upgraded image.*" (E.g., see Fig. 3A & Column 2, line 65 – Column 3, line 2), wherein it would have been obvious to a person of ordinary skill in the art to store a web page on a server.

Martinez and the combined teachings of **Marsh, Asco, Jennery** and **Doherty**, are analogous art because they are both concerned with the same field of endeavor, namely, an upgradeable BIOS program. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement **Martinez's** limitation into the combined teaching method for updating firmware. The motivation to do so would have been to further decrease manual intervention by simply providing the URL to an executable rather than manually downloading it to a pre-specified server. The advantages would be time and cost savings.

Claim **12** is rejected as method versions of claim **5**. Likewise, the limitations of the aforementioned claim are disclosed as described. Thus, the limitations are met for claim **12**.

In regard to claim **19**, the rejections of base claim **18** are incorporated as explained above. Furthermore, **Martinez** discloses:

- "...*said pointer includes a URL.*" (E.g., see Figure 3A & Column 2, line 65 – Column 3, line 2), wherein the retrieved page is a pointer which includes a URL.

5.   Claims **8** and **14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marsh, Asco, Jennery** and **Doherty** as applied to claim **1** above, and further in view of ·**Olarig** (US 6,009,524).

In regard to claim **8**, **Marsh, Asco, Jennery** and **Doherty** disclose the system of claim **1** above. But in claim **1**, they did not disclose expressly "...*wherein said message includes an encryption key to be used to help assure the authenticity of the image.*" However, **Olarig** discloses:

-   "...*wherein said message includes an encryption key to be used to help assure the authenticity of the image.*" (E.g., see Fig. 2 & Column 4, lines 59-67), wherein, a dual-key digital-signature-verification system are used to assure authenticity.

Olarig and the combined teachings of **Marsh, Asco, Doherty** and **Jennery** are analogous art because they are both concerned with the same field of endeavor, namely, an upgradeable BIOS program. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement **Olarig's** limitation into the combined teaching method for updating firmware. The motivation to do so would have been to assure authenticity of the BIOS program. Thereby, eliminating a tampered program that could have severe time and cost consequences in addition to security issues.

Claim **14** is rejected as a method version of claim **8**. Likewise, the limitations of the aforementioned claim are disclosed as described. Thus, the limitations are met for claim **12**.
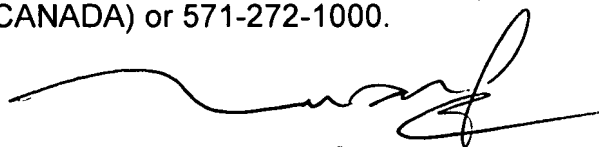
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Romano whose telephone number is (571) 272-3872. The examiner can normally be reached on 8-5:30, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JJR

TUAN DAM
SUPERVISORY PATENT EXAMINER